



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 3, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0162

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	12.080 - Disclosure of Department Records 3. All Records That Relate to a Public Disclosure Request (PDR) Must Be Provided or Identified to the Legal Unit	Not Sustained (Inconclusive)

EXECUTIVE SUMMARY:

It was alleged that the Named Employee may have purposefully failed to provide responsive records to a public records request and may have directed a subordinate employee to destroy responsive records.

SUMMARY OF INVESTIGATION:

An officer – referred to here as Witness Officer #1 (WO#1) – was interviewed as part of another case in which Named Employee #1 (NE#1) was the involved employee. During that interview, WO#1 told OPA that NE#1 once told her to delete documents that were being sought as part of a public records request. Given this statement, OPA opened an investigation.

WO#1 told OPA that SPD's Public Disclosure Unit (PDU) requested that she locate and produce documents concerning bicycle theft operations. She said that she had some of the documents in her possession, but she had to ask her supervisor, NE#1, about others. She forwarded the request to NE#1. She believed that NE#1 told the PDU that they had no responsive documents. When she later informed NE#1 of potentially responsive operational plans on her desktop computer, he instructed her to delete them. She said that an Administrative Assistant witnessed this conversation. WO#1 told OPA that she later provided the plans to the PDU without informing NE#1 that she did so.

As part of its investigation, OPA interviewed the Administrative Assistant. She recalled receiving a records request concerning bicycle theft operations from the PDU and said that it was handled by NE#1. She did not remember any conversation during which NE#1 told WO#1 to delete responsive records. She also was not aware of whether WO#1, herself, responded to the records request without consulting NE#1.

NE#1 told OPA that WO#1 was contacted by the PDU concerning documents relating to bicycle theft operations. NE#1 said that, while WO#1 had such documents, she did not have the specific records that the PDU was seeking. NE#1 said that he produced various documents to the PDU. He acknowledged that he told WO#1 that she could delete bicycle theft operations documents but stated that those records were not related to the records request in question. He said that destruction of the records was consistent with the standard operating procedures for the South Precinct at that



time. He said that, since this complaint was filed, the South Precinct changed its procedures to now preserve all operations plans.

OPA sought documents from the PDU concerning this matter, including records requests made to NE#1 and/or WO#1 and emails between them and the PDU. OPA was able to locate a records request that appeared to be the one at issue. It was first sent to another Sergeant at the South Precinct. That Sergeant said that he had no responsive records and looped in the Administrative Assistant. The Administrative Assistant, in turn, said that she would work with NE#1. There was also an email between the PDU and the then South Precinct Captain concerning the records. He emailed the South Precinct Operations Lieutenant. The Captain told the Operations Lieutenant that he did not think there were responsive records but asked her if she or NE#1 had provided any records to the PDU. The Operations Lieutenant emailed the PDU. She wrote that NE#1 had provided a copy of a bicycle theft operations plan “a while back” and that, moving forward, the South Precinct would be keeping all operations and tactical plans. Ultimately, OPA could not locate a copy of the completed response to the records request in this case or any relevant communications between NE#1, WO#1, and the PDU, or between NE#1 and WO#1.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. It was alleged that, had NE#1 purposefully failed to comply with a records request and, instead, directed a subordinate employee to delete records, this would constitute a violation of law and policy.

The behavior described by WO#1 is certainly concerning. SPD employees – and, indeed, all government workers – have a duty and responsibility to comply with public records laws. The failure to do so is not only illegal but also undermines community faith in the transparency and accountability of government.

Ultimately, the evidence is inconclusive as to whether NE#1 engaged in the behavior attributed to him. First, the only impartial witness to the conversation between NE#1 and WO#1 – the Administrative Assistant – denied recollection of NE#1 directing WO#1 to delete responsive documents. Second, NE#1 stated that he did produce responsive documents and he explained that the documents he said that WO#1 could delete were not included in these. He further explained that this was consistent with the standard operating procedure at that time in the South Precinct and this appears to be corroborated by the Operations Lieutenant. Third, there was no documentation in the possession of the PDU that either confirmed or denied the account provided by NE#1 or, for that matter, the allegations made by WO#1. The combination of these three factors prevent OPA from reaching a determinative decision concerning whether NE#1 violated policy and the law here.

Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**



Named Employee #1 - Allegation #2

12.080 - Disclosure of Department Records 3. All Records That Relate to a Public Disclosure Request (PDR) Must Be Provided or Identified to the Legal Unit

As discussed above, OPA found insufficient evidence to determine either that NE#1 failed to provide responsive records with his possession, custody, or control to the PDU, or, in the alternative, that he purposefully deleted or caused to be deleted responsive records. Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**